

On October 2, 2003 appellant, then a 53-year-old general expediter/clerk, filed an occupational disease claim alleging that on September 17, 2003 he became aware that he had developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment. Appellant alleged that he developed stress and anxiety, and

had loss of sleep and the inability to concentrate on things due to bulk mail containers being placed in his normal working area. He stopped work on October 1, 2003 and did not immediately return. Appellant alleged that he had to file a grievance to protect himself from disciplinary actions, that his suggestions were ignored, and that he had been set up to test his integrity. He also claimed that his treating physician found that he was unable to return to work until further notice.

In a letter dated October 15, 2003, the Office requested that appellant provide further information including a description in detail of the factors he implicated in causing his condition and rationalized medical records identifying a causal relationship with these factors.

As work factors implicated by appellant as causing his emotional condition, he alleged that after 27 years he was set up to test his integrity with blank money orders, that he was given changes in his work operation and expected to cope with them without requesting assistance and that he had to take on other duties as personnel left. Appellant provided a 12-page statement in which he described the duties of an expeditor, discussed problems with work space and bulk mail containers being left from the previous shift in his expeditor area, that additional employees were only occasionally assigned, that he received little or no response from supervisors when he brought problems to their attention, he was being frustrated by being told "you figure it out," that on September 17, 2003 he had to set up outside due to the containers, that his supervisor was off work for three days, that management made no attempts to help him with the problem, that on September 24, 2003 it happened again, that they were told not to move the empty containers, that his request for family leave was mishandled, that he had to file a union grievance, that his work schedule was improperly filled out, that he was involved with an investigative interview, that he was given a letter of warning, that his suggestions about work tasks were ignored, that another supervisor, Daniella Yuvencio, was incompetent, that he had to work overtime frequently, that he did not feel that he could trust anyone in management and that he could not sleep well at night.

Appellant submitted an October 15, 2003 medical report from Dr. Ernest A. Flores, a psychiatrist, who opined that, as a result of direct work-related stress, appellant suffered from severe anxiety disorder and major depression, and was unable to return to any type of duties with the employing establishment.

Appellant provided several coworker statements attesting that the postmaster kept his personnel on edge, that he harassed employees, that he changed days off and work schedules, that political mail was mishandled, that he changed things just to change things, and that he came onto the floor and yelled at people.

Another coworker noted that appellant's mood deteriorated over time, the supervisor changed tour times without reason, and appellant was under stress and had to file a grievance.

The union steward noted that the supervisor treated the employees as if they had no intelligence, that management yelled at all employees, that appellant received a letter of warning for something that management did not know how to handle, that appellant was correct about his working area being filled up with containers which needed to be moved, that there was a

shortage of personnel and that appellant was harassed by his supervisor to bring the mail in from the dock when there was no place to put it.

Another clerk coworker provided a statement noting that appellant was an excellent, dedicated employee, that he was under a great deal of pressure as his area had to be emptied and cleaned up from the night before he could begin processing mail, that employees were mistreated by management, that an unsafe environment existed at that branch of the employing establishment, that appellant was told to set up outside because the postmaster wanted the empty containers left blocking the expedite area, that appellant had gone way beyond his call of duty, and that he was constantly required to work outside his restrictions after his bilateral knee replacements.

Appellant additionally submitted an undated form report from a psychiatrist with an illegible signature who indicated that appellant should not work until further notice and he opined that appellant's episode of illness was expected to last at least 6 to 12 months.

A back-up expeditor provided a statement noting the duties of an expeditor and noting that appellant did well.

In support of his claim, appellant also submitted a copy of regulations regarding employing establishment employment.

By decision dated December 2, 2003, the Office rejected appellant's emotional condition claim finding that he had failed to implicate any compensable factor of his employment.

On January 30, 2004 appellant requested reconsideration of the December 2, 2003 decision.

In support appellant submitted Chapters 1 and 5 from the employing establishment's employee handbook. Appellant also submitted an employment agreement, and a section from the employee and labor relations manual.

Appellant also submitted a January 30, 2004 letter in which he summarized his areas of concern in the development of his disabling condition. Appellant claimed: (1) he experienced frustration over his suggestions not being implicated; (2) he lost confidence in management; (3) he filed a grievance; (4) he was denied requested leave; (5) his employer was downsizing; (6) his assigned duties required that he had to go to extreme measures; (7) he received a letter of warning; (8) his supervisors started changing times and schedules; and (9) he was harassed by his supervisor. Appellant stated that he wanted financial compensation from the Office for his out-of-pocket medical expenses. He claimed that the Office decision ignored employee regulations and contracts.

By decision dated May 3, 2004, the Office denied modification of the December 2, 2003 decision finding that appellant had failed to implicate any compensable factor of his employment in the development of his emotional condition.

LEGAL PRECEDENT

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.³ Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁶

However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Id.*

³ 5 U.S.C. §§ 8101-8193.

⁴ *Donna Faye Cardwell*, *supra* note 1, see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁷

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.⁸ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁹ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹⁰ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.¹¹

The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹² However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹³

Matters concerning the use of leave and attendance are generally related to the employment as administrative matters. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable factor of employment.¹⁴

An employee's frustration in not having his suggestions taken, or not being allowed to work in an environment of his choosing, is also not a compensable factor of employment. The Board has found that frustration with his work environment is not related to his regular or specially assigned duties, but falls outside the scope of the Act and is a supervisory function related to

⁷ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁸ *See Barbara Bush*, 38 ECAB 710 (1987).

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹¹ *See Donna Faye Cardwell*, *supra* note 1; *see also Lillian Cutler*, *supra* note 4.

¹² *Sylvester Blaze*, 42 ECAB 654 (1991).

¹³ *Ruthie M. Evans*, *supra* note 9.

¹⁴ *James P. Guinan*, 51 ECAB 604 (2001).

performing supervisory duties. It has stated that appellant's desire to work in a particular environment is a function of his frustration with supervisory policies and procedures, and not a controlling factor in the execution of his assigned duties. Mere disagreement or dislike of a supervisory or management action will not be compensable absent evidence of error or abuse.¹⁵

Disciplinary matters concerning a letter of warning for conduct pertain to actions taken in an administrative capacity, and are functions of the employer and not of the employee.¹⁶

Moreover, stress from pursuing union activities or grievances is not compensable as these actions are not deemed to be employment factors as they are not a requirement of employment.¹⁷

Finally, stress from downsizing is not a compensable factor of appellant's employment as it is purely an administrative task. Job insecurity, including fear of reduction-in-force, is not a compensable factor of employment under the Act.¹⁸

ANALYSIS

As appellant has failed to submit any reliable and probative evidence corroborating and substantiating that any of the alleged incidents, employment factors or wrongs he perceived as occurring actually happened to him, the Board finds that appellant has failed to establish that any emotional condition he may have is causally related to compensable factors of his federal employment.

Appellant has failed to implicate any compensable factors in the development of his emotional condition. He implicated the following factors: (1) he experienced frustration over his suggestions not being implemented; (2) he lost confidence in management; (3) he filed a grievance; (4) he was denied requested leave; (5) his employer was downsizing; (6) his assigned duties required that he had to go to extreme measures; (7) he received a letter of warning; (8) his supervisors started changing times and schedules; and (9) he was harassed by his supervisor.

As noted above, however, appellant's frustration over his suggestions not being implemented is merely his frustration with not being allowed to work in an environment of his choosing. This is not appellant's right and does not arise out of and in the course of his employment and therefore is not compensable. Mere disagreement or dislike of a supervisory or management action will not be compensable absent evidence of error or abuse, and no such error or abuse was alleged in this case.

Appellant lost confidence in management, but this also is not compensable as it does not arise out of or in the course of his regular or specially assigned duties. It is his personal feeling

¹⁵ *Frank B. Gwozdz*, 50 ECAB 434 (1999).

¹⁶ *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

¹⁷ *Dinna M. Ramierz*, 48 ECAB 308 (1997).

¹⁸ *Ronald C. Hand*, 49 ECAB 113 (1997).

towards management, and does not pertain to the performance of his assigned duties, and therefore has no bearing on his employment.

Appellant claimed that he filed a grievance; however, this is not a compensable factor of employment as the filing of a grievance is personal to appellant and not part of his required activities. As stress from filing grievances and complaints is personal and since their filings are not required by the employment, they are not compensable and deemed to be employment factors.

Appellant claimed that he was denied requested leave, but he provided no evidence to document error or abuse in making this decision. As leave is an administrative matter, absent evidence of error or abuse, its denial is not a function of appellant's employment. As no such error or abuse was evidenced here, the denial of appellant's requested leave was not compensable.

Appellant claimed that his employer's downsizing was stressful, but this too is an administrative function that did not arise out of the performance of appellant's assigned duties. Job insecurity, including reduction-in-force, is not compensable under the Act, absent evidence of error or abuse. As no such evidence was offered here, this downsizing was not a compensable factor of employment.

Appellant claimed that his assigned duties required that he go to extreme measures, but this allegation is vague and nonspecific. The extreme measures appellant had to resort to were not detailed and therefore whether or not it was compensable under the Act cannot be determined. Appellant has therefore not met his burden of proof to establish a compensable factor of employment with this allegation.

Appellant claimed that his emotional condition developed due to his receipt of a letter of warning. As disciplinary matters concerning letters of warning for conduct pertain to the employing establishment's administrative functions rather than to an employee's functions, absent evidence of error or abuse, no compensability can be shown related to appellant's receipt of such a letter.

Appellant alleged that his supervisor kept changing his schedule, but as scheduling was an administrative function and absent evidence of administrative error or abuse, compensability cannot be demonstrated. This also involves working in an environment or a shift that he desired rather than on the one assigned. Such schedule changes are, therefore, not compensable factors of employment.¹⁹

Finally, appellant alleged that he was harassed by his supervisor; however, no witness to any claimed harassment was produced. Appellant did not provide times, places or witnesses to the incidents of alleged harassment, and therefore did not establish that such harassment occurred

¹⁹ Repeated changes in shifts, with resultant alternation of sleep patterns and illnesses, followed by inadequate time off, such as could occur in an abusive administrative situation with inadequate staffing such as in a hospital, has not been shown to be the facts of this case so as to bring the shift changes into the coverage of the Act due to administrative abuse. See *Virginia Dorsett* 50 ECAB 479 (1999).

as alleged. In order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.²⁰ As no such evidence was presented in this case, appellant has not established any compensable factor of his employment as causative of his alleged emotional condition.

CONCLUSION

Appellant has failed to meet his burden of proof to establish his emotional condition claim, as he has failed to implicate any compensable factor of appellant's employment as being causative.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 3, 2004 and December 2, 2003 and are hereby affirmed.

Issued: January 7, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

²⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).